

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FENGLIN SHI)	
Claimant)	
)	
VS.)	
)	
STATE OF KANSAS)	
Respondent)	Docket No. 213,957
)	
AND)	
)	
STATE SELF-INSURANCE FUND)	
Insurance Carrier)	

ORDER

Claimant appealed Administrative Law Judge Brad E. Avery's Award dated August 3, 2000. The Board heard oral argument on January 17, 2001.

APPEARANCES

Claimant appeared by her attorney, Jan L. Fisher. Respondent and insurance carrier appeared by their attorney, Lisa J. Lewis. There were no other appearances.

RECORD & STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

1. Whether the claimant contracted an occupational disease arising out of and in the course of her employment.
2. Whether the claimant gave proper notice and timely written claim.
3. Whether the claimant is entitled to temporary total disability benefits.

4. Whether the claimant is entitled to unauthorized and future medical benefits.
5. Whether the claimant is entitled to reimbursement of medical bills.
6. The nature and extent of claimant's disability.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition to the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

The claimant alleges that she contracted the hepatitis B virus handling human placentas in the course of her laboratory work for the respondent. The Administrative Law Judge determined that the claimant did not meet her burden of proof to establish that she contracted the virus in the course of her employment.

The claimant was a physician in China and immigrated to the United States in 1987. She was initially employed with the University of Texas Health Center. In 1989, the claimant obtained employment with the University of Kansas in the pharmaceutical chemistry department. The department was conducting research on an in vitro model of the blood brain barrier. Monkey and cow tissue was used in the research. The research grant ended in 1991 and the claimant obtained employment with the University of Kansas Medical Center.

The claimant returned to the pharmaceutical chemistry department in 1992 and resumed research on the blood brain barrier project using cow brains for the research which continued until 1994. On September 30, 1994, as a result of a new grant, the claimant began research in placental transport metabolism. The research was to determine if the placenta could be utilized as a barrier to protect the fetus from such things as drug exposure. The research was conducted on rat and human cell lines as well as human placental tissues.

The human placentas were donated through an agreement with three area hospitals located in Overland Park, Topeka and Lawrence. The human placentas were not specifically tested for the hepatitis B virus but only placentas certified by a physician to be disease free were to be donated. The hospital staff would place the placenta in a zip lock bag and then into a gallon container. When picked up, the container would be placed in a cooler with ice. Upon reaching the laboratory, the placenta would either go into the freezer or immediately be used.

Three individuals were assigned to the placental transport metabolism project. The claimant was designated to work with the rat and human cell lines and two other individuals

were to work with the human placentas. As a precaution, the two individuals assigned to work with the placentas received a hepatitis B vaccination.

The amount of contact the claimant had with the human placentas was controverted. The claimant contends that she regularly handled the human placenta not only as part of her research but also in order to assist the other two researchers. In addition, the claimant asserts that gloves were not always available and she handled the tissue without following normal gloving procedure. Moreover, the claimant detailed an incident where she went to the hospital to pick up a donated placenta and there was blood on the outside of the container.

The project director disputes that there was any need for the claimant to use the human placenta and the workers assigned to that project typically picked up the placentas. Jerilyn Kenagy, one of the workers directly assigned to the human placenta project, testified the claimant demonstrated how to process and culture the first placenta that arrived for the project. She further testified that the claimant was gloved during that procedure. She could not recall whether the claimant had ever picked up a donated placenta from the hospital. Moreover, she could not recall the claimant ever working without gloves on the human placenta tissue. There was testimony that claimant was the most safety conscious employee in the lab as demonstrated by the fact that she frequently double gloved.

The claimant began to have health problems in 1990 but did not seek treatment until she obtained health insurance in 1992. Blood tests at that time showed elevated liver enzymes. In July 1994, the claimant returned to China for a vacation and while she was there had a physical examination including routine blood tests. The claimant tested positive for the hepatitis B virus. The claimant testified that she was unaware of the test results until sometime in early 1996.

In 1996, the claimant's internist ordered blood tests which again showed elevated liver enzymes. Additional blood tests were positive for the presence of hepatitis B. During this time frame, the claimant also became aware of the positive test results from the examinations that had been done in China in 1994.

A preliminary hearing was held in this case on April 14, 1997. At that hearing, it was the claimant's contention that she contracted the hepatitis B virus as a result of a needle stick while working with the monkey brain cells on the earlier blood brain barrier project. However, she later altered her position and now asserts she contracted the hepatitis B virus working with the human placentas.

The change in her theory regarding the manner she contracted the virus is based in part upon Dr. Greenberger's testimony. The doctor is a professor of medicine and senior associate for medical education at the University of Kansas Medical Center. The doctor's specialty is internal medicine with a special interest in gastrology and liver disease.

After she was diagnosed with hepatitis B, the claimant corresponded with Dr. Greenberger concerning the disease. In response to claimant's letter, the doctor opined that the unusual findings on her 1996 blood test wherein she had the surface antigen and the surface antibody at the same time could be explained by the fact that there had been more than one exposure to the hepatitis B virus. The doctor further opined that the significance of the antibody is that one infection had cleared. Although the doctor could not determine which infection had cleared, he stated the likely inference would be it was the first infection.

It is the claimant's contention that when she immigrated to the United States in 1987 she tested negative for hepatitis B. Thereafter, she tested positive in 1994 and after beginning work with the human placentas she tested positive for hepatitis B in 1996. Under Dr. Greenberger's two infection scenario, the claimant contends the first infection was prior to 1994 and the second was sometime before 1996 or during the time she alleges contact with the human placentas.

The difficulty with claimant's theory is that Dr. Greenberger provides further testimony that indicates claimant contracted both infections before the start of the research project with the human placentas. Dr. Greenberger noted that the 1994 test results indicated that it was consistent with acute or recent infection with the virus. The doctor testified that the occurrence of hepatitis B in China is very high and the fact that claimant was a physician treating patients in China would most likely mean that claimant had the virus in China. He further stated that the virus wasn't evident in the 1987 test because at that time the sensitivity of the testing was not as good. The doctor specifically testified that the fact nothing was detected in 1987 did not mean claimant could not have had a low titer of the surface antibody back in 1987 as the first infection. He further testified that when claimant got the second infection it stimulated her body to remember and put out the surface antibody.

Under this scenario the claimant's first infection was likely before immigration to the United States in 1987. The 1994 test results indicated an acute or recent second infection. It was after the claimant returned from China in 1994, that the research using the human placentas began. Therefore, the second hepatitis B infection was contracted before the human placenta tissue research had begun.

The claimant did not provide any evidence that the human placentas donated for the research project were infected with the hepatitis B virus. Nor was there any medical causation evidence provided. Nonetheless, the claimant argues that she did not engage in any of the activities listed by Dr. Greenberger as methods of transmission of the hepatitis B virus. Thus, it is her contention that by exclusion, the only possible means of contracting the virus was handling placental tissues at the lab. This argument is disingenuous because the claimant's exposure theory is posited upon the fact that she was infected twice. If the claimant did not engage in any activity that could have resulted in exposure to the virus, how does she explain the 1994 infection? Suffice it to say that there are several possible

methods of transmission of the virus that could account for claimant contracting the virus. However, possible is not the standard. The burden of proof is more probably true than not and this record is devoid of evidence to meet that statutory requirement.

After a careful review of the evidentiary record, the Board concludes that the claimant has failed to identify a specific incident where she came in contact with infected blood or tissue. The Board further agrees with the Administrative Law Judge that it is difficult to surmise that a physician would handle blood and tissue without the minimum precaution of wearing gloves. Lastly, the time frames of the first and second infections detailed by Dr. Greenberger indicate that it is likely the claimant had contracted her second infection before the human placenta research had begun. Upon review of the entire evidentiary record, the Board concludes that the claimant has not met her burden of proof to establish that she contracted the hepatitis B virus arising out of and in the course of her employment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated August 3, 2000, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of March 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

Copies to:

Jan L. Fisher, Claimant's Attorney
Lisa J. Lewis, Respondent's Attorney
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director